

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Washington Analyst: Jeani Brent Bill Number: AB 2205

Related Bills: See Prior Analysis Telephone: 845-3410 Amended Date: 05/14/98

Attorney: Doug Bramhall

Sponsor:

SUBJECT: Economic Development and Job Creation Program

- ☒ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as amended March 31, 1998.
- ☐ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- ☒ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 19, 1998, and amended March 31, 1998.
- ☒ FURTHER AMENDMENTS NECESSARY.
- ☐ DEPARTMENT POSITION CHANGED TO _____.
- ☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 19, 1998, and AMENDED March 31, 1998, STILL APPLIES.
- ☐ OTHER - See comments below.

SUMMARY OF BILL

Under the Government Code, this bill would require the Trade and Commerce Agency to designate one city for the Economic Development and Job Creation Program. The city must have (1) a population of less than 100,000, (2) an unemployment rate at least 4% higher than the County of Los Angeles, and (3) a public assistance caseload that is greater than 25% of the city's population.

Under the Revenue and Taxation Code, this bill would specify that most tax incentives available to taxpayers in the existing Los Angeles Revitalization Zone would apply to taxpayers operating businesses within the designated city.

Under uncodified law, this bill would require the department annually, beginning February 1, 2000, to report to the Governor and the Legislature information on the dollar value of the tax incentives claimed each year by businesses located in the city designated under this bill. The bill also would require the department to design and distribute forms and instructions that would allow the department to determine the following:

1. The number of jobs and new employees for which the hiring credits are claimed.
2. The amounts of each tax incentive claimed under the bill.
3. The number and nature of businesses claiming each individual tax incentive and the number of businesses for which the tax incentives claimed are their first economic development area tax incentive.
4. The proportional distribution of tax incentives among industry groups.

Board Position:

☐ S ☒ X ☐ NA ☐ NP
☐ SA ☐ O ☐ NAR
☐ N ☐ OUA ☐ PENDING

Department/Legislative Director

Date

Johnnie Lou Rosas

6/18/98

SUMMARY OF AMENDMENT

The May 14, 1998, amendments added the Government Code provisions regarding Trade and Commerce Agency designation, removed references to the City of Compton, added the reporting requirement, and accepted the technical amendments proposed in the department's prior analyses of this bill.

The May 14, 1998, amendments resolved all but one technical consideration and the implementation consideration, which are included below for the reader's convenience. Except for the resolved technical considerations, the department's analyses of the bill as introduced and as amended March 31, 1998, still apply. In addition, the department has identified other implementation, and technical considerations, which are discussed below.

Implementation Considerations

The hiring credit defines "resident" by reference to Section 7101 of the Government Code. Section 7101 of the Government Code is contained in the Los Angeles Revitalization Zone (LARZ) chapter, which will be repealed by its own provisions on December 1, 1998. Thus, after that date, the reference no longer would be applicable. Also, the definition of "resident" contained in Section 7101 requires that the individual reside in the LARZ, which will no longer exist after December 1, 1998. Pursuant to discussions with the author's staff and the sponsor, amendments 5 and 14 would resolve this concern by defining "resident" as a person who lives in the city designated under the bill.

This bill contains operative dates for the transaction for which the incentive applies (e.g., purchasing qualified property). To ensure that the incentives are available equally to calendar and fiscal year taxpayers, amendments 1, 2, 8, 9, 11, 12, 19, and 20 would replace the beginning date with a reference to the date the city is designated and would remove the ending transactional operative date. Thus, the incentives would apply to taxable or income years beginning on or after the date the city is designated and beginning before January 1, 2003.

Technical Considerations

This bill raises the following technical considerations:

1. This bill provides that the tax incentives apply to business operations in the city designated pursuant to Government Code Section 7102.5. That code section would be added to Chapter 12.95 of the Government Code. However, Chapter 12.95 of the Government Code will be repealed by its own provisions on December 1, 1998, thereby also repealing Section 7102.5, if added by this bill.
2. The bill would require that the hiring credit be reduced by the amount of certain other credits allowed. This provision, however, references the expired jobs tax credit and the repealed enterprise zone and program area hiring credits, which were replaced by the new enterprise zone hiring credit. In addition, this section would not require the hiring credit provided under this bill to be reduced by any allowed hiring credit provided under the new Manufacturing Enhancement Area or Targeted Tax Area provisions. Pursuant to discussions with the author's staff and the sponsor, amendments 7 and 17 would resolve this concern by instead providing that, if the wages qualified for more than one credit, only one credit could be claimed. Amendments 7 and 17 also

make a technical correction by changing the phrase "any reduction" to "the application of the limitation."

3. This bill would require taxpayers to recapture the hiring credit if the qualified employee is terminated within a specified period. The department has determined that the recapture rules are unclear with regards to their application to employers of seasonal employees. Amendments 6 and 16 would provide clarification and would define "seasonal employment."
4. Amendments 10, 15, and 18 would replace the words "bank or corporation" with "corporation," since the Bank and Corporation Tax Law (B&CTL) definition of "corporation" has been amended to include banks.
5. Amendments 21 and 22 would remove unnecessary references in the B&CTL provisions to "Part 11," since the B&CTL is Part 11.
6. Amendment 4 would replace "the city of Compton" with the phrase "the city designated pursuant to Section 7102.5 of the Government Code."
7. Amendments 3 and 13 would replace the terms "individual" and "disadvantaged individual" with the correct term "qualified disadvantaged individual" and would insert the word "first" where appropriate.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 2205
As Amended May 14, 1998

AMENDMENT 1

On page 4, strikeout line 31, and insert:

after the date the city is designated pursuant to Section 7102.5 of the
Government Code, of

AMENDMENT 2

On page 7, line 14, strikeout "January 1, 1998" and insert:

the date the city is designated pursuant to Section 7102.5 of the Government Code

AMENDMENT 3

On page 7, line 35, strikeout "individual" and insert:

qualified disadvantaged individual first

AMENDMENT 4

On page 8, line 3, strikeout "City of Compton" and insert:

city designated pursuant to Section 7102.5 of the Government Code

AMENDMENT 5

On page 8, strikeout lines 15 and 16, and insert:

(5) "Resident" means a person residing in the city designated pursuant to
Section 7102.5 of the Government Code.

AMENDMENT 6

On page 9, modify lines 4 through 40, as follows:

business.

(9) "Seasonal employment" means employment by a taxpayer that has regular
and predictable substantial reductions in trade or business operations.

(c) (1) (A) If the employment, other than seasonal employment, of any
qualified disadvantaged individual, with respect to whom qualified wages are

taken into account under subdivision (a), is terminated by the taxpayer at any time during the first 270 days of that employment, whether or not consecutive, or before the close of the 270th calendar day after the day in which that qualified disadvantaged individual completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that qualified disadvantaged individual.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a), is not continued by the taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual first commences seasonal employment with the taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified disadvantaged individual commences seasonal employment, shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that qualified disadvantaged individual.

(2) (A) ~~Paragraph~~ Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a disadvantaged individual who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a disadvantaged individual who, before the close of the period referred to in subparagraph (A) of paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of a disadvantaged individual, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of a disadvantaged individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a disadvantaged individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the taxpayer fails to offer seasonal employment to that individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, if it is determined under the applicable employment compensation provisions that the failure to continue the seasonal employment was due to the misconduct of that individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the taxpayer.

(v) A failure to continue the seasonal employment of a qualified disadvantaged individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

@@@@LEG. COUNSEL: Please renumber remaining subparagraph.

AMENDMENT 7

On page 10, modify lines 22 through 39 as follows:

(e) ~~The credit shall be reduced by the credits allowed under Sections 17053.7, 17053.8, 17053.10, 17053.11, and 17053.17 claimed for the same disadvantaged individual. The credit shall also~~ If the taxpayer is allowed a credit for qualified wages pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to those qualified wages.

(f) The credit allowed by this section shall be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

(g) In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to ~~any reduction~~ the application of the limitations required by subdivision ~~(f) or (g)~~ (h) or (i).

~~(f)~~

(h) In the case where the credit otherwise allowed under this section exceeds the net tax for the taxable year, that portion of the credit that exceeds the net tax may be carried over and added to the credit, if any, in the 15 succeeding taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

~~(g)~~

(i) (1) The amount of the credit otherwise allowed under this

AMENDMENT 8

On page 13, strikeout lines 4 and 5, and insert:

on or after the date the city is designated pursuant to Section 7102.5 of the Government Code.

AMENDMENT 9

On page 23, lines 28 and 29, strikeout "before January 1, 2004"

AMENDMENT 10

On page 25, line 33, strikeout "bank or"

AMENDMENT 11

On page 25, ~~strikeout~~ line 38, and insert:

after the date the city is designated pursuant to Section 7102.5 of the Government Code, of

AMENDMENT 12

On page 28, line 20, ~~strikeout~~ "January 1, 1998" and insert:

the date the city is designated pursuant to Section 7102.5 of the Government Code

AMENDMENT 13

On page 29, line 2, ~~strikeout~~ "disadvantaged individual" and insert:

qualified disadvantaged individual first

AMENDMENT 14

On page 29, ~~strikeout~~ lines 23 and 24, and insert:

(5) "Resident" means a person residing in the city designated pursuant to Section 7102.5 of the Government Code.

AMENDMENT 15

On page 29, line 25, ~~strikeout~~ "bank or".

AMENDMENT 16

On page 30, modify lines 17 through 40, and on page 31, modify lines 1 through 14, as follows:

business.

(9) "Seasonal employment" means employment by a taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) (1) (A) If the employment, other than seasonal employment, of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a), is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that qualified disadvantaged individual completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to

qualified wages paid or incurred with respect to that qualified disadvantaged individual.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a), is not continued by the taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual first commences seasonal employment with the taxpayer, the tax imposed by this part, for the income year that includes the 60th month following the month in which the qualified disadvantaged individual commences seasonal employment, shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that qualified disadvantaged individual.

(2) (A) ~~Paragraph~~ Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a disadvantaged individual who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a disadvantaged individual who, before the close of the period referred to in subparagraph (a) of paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of a disadvantaged individual, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of a disadvantaged individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a disadvantaged individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the taxpayer fails to offer seasonal employment to that individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, if it is determined under the applicable employment compensation provisions that the failure to continue the seasonal employment was due to the misconduct of that individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the taxpayer.

(v) A failure to continue the seasonal employment of a qualified disadvantaged individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) For purposes of paragraph (1), the employment

AMENDMENT 17

On page 31, modify lines 36 through 40 and on page 32, modify lines 1 through 12, as follows:

(e) ~~The credit shall be reduced by the credits allowed under Sections 23621, 23622, 23623, 23623.5, and 23625, claimed for the same disadvantaged individual. The credit shall also~~ If the taxpayer is allowed a credit for qualified wages pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to those qualified wages.

(f) The credit allowed by this section shall be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

(g) In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction the application of the limitations required by subdivision ~~(f) or (g)~~ (h) or (1).

~~(f)~~

(h) In the case where the credit otherwise allowed under this section exceeds tax for the income year, that portion of the credit that exceeds the tax may be carried over and added to the credit, if any, in the 15 succeeding income years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

~~(g)~~

(i) (1) The amount of credit otherwise allowed

AMENDMENT 18

On page 34, line 6, strikeout "bank or".

AMENDMENT 19

On page 34, strikeout lines 15 and 16, and insert:

on or after the date the city is designated pursuant to Section 7102.5 of the Government Code.

AMENDMENT 20

On page 45, lines 8 and 9, strikeout "before January 1, 2004"

AMENDMENT 21

On page 45, line 10, strikeout "of Part 11"

AMENDMENT 22

On page 45, line 31, strikeout "of Part 11"